

1 ROBERT WAGGENER - SBN: 118450  
LAW OFFICE OF ROBERT WAGGENER  
2 214 Duboce Avenue  
San Francisco, California 94103  
3 Phone: (415) 431-4500  
Fax: (415) 255-8631  
4 E-Mail: rwlaw@mindspring.com

5 Attorney for Defendant CELSO MARTEARENA-ARRIOLA

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7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10

11 UNITED STATES OF AMERICA

No. CR08 00272 SI

12 Plaintiff,

**DEFENDANT'S MEMORANDUM RE:  
PRETRIAL ISSUES AND MOTIONS *IN*  
*LIMINE***

13 v.

14 CELSO MARTEARENA-ARRIOLA,

PTC: August 26, 2008

Time: 2:00 p.m.

15 Defendant.

Crtrm: 10, Hon. S. Illston

16  
17 **INTRODUCTION**

18 Defendant Celso Martearena-Arriola is charged in a one-count Superseding Indictment  
19 with illegal reentry into the United States, in violation of 8 U.S.C. Section 1326. Mr. Martearena-  
20 Arriola submits this memorandum to address the current status of the case and various pretrial  
21 legal and factual issues and motions *in limine* relating to the trial currently scheduled for August  
22 26, 2008.

23 The government and defense counsel have met and conferred several times regarding  
24 various pretrial and trial issues and this memorandum describes the current outstanding  
25 unresolved issues and disputes, and raises new issues regarding the evidence to be introduced at  
26 the trial of this matter. To the extent possible, the parties will continue to attempt to resolve  
27 matters as the case progresses towards the trial date.

28 **DEFENDANT'S MEMO RE PRETRIAL  
ISSUES AND MOTIONS *IN LIMINE***

1 The government has submitted an exhibit list and binder setting out 17 separate items of  
2 evidence it intends to introduce, supplemented by a witness list setting out what is understood to  
3 be 13 different witnesses to lay the foundation for the exhibits and/or to provide evidence as to  
4 the illegal entry charge. Below, defendant addresses issues relating to the various offered exhibits  
5 and the topics of testimony to be presented by the named witnesses.

### 6 1. STIPULATIONS

7 Prior counsel for the defendant, Federal Public Defender Barry Portman, indicated his  
8 willingness to enter into various stipulations and agreements with the government as to the  
9 admissibility of various exhibits and the non-introduction or inadmissibility of evidence unless  
10 the defendant should decide to testify. The playing field has changed with the appointment of  
11 new counsel and the filing of a Superseding Indictment and at this point there are no stipulations  
12 by the defendant as to the admissibility of evidence. Against the advice of counsel, the position  
13 of not entering in to various stipulations applies to the government's proof that the defendant has  
14 suffered a prior aggravated felony conviction prior to his deportations, in this case a 1993 Santa  
15 Clara County status crime conviction for being an ex-felon in possession of a firearm. Note that  
16 although the defendant is not willing to stipulate to the existence of the 1993 conviction, there  
17 are still remaining objections set out below as to how the conviction can be proved and what  
18 documents or portions of documents after redaction can be admitted in to evidence. (See,  
19 Government Exhibits 15-17)

20 With prior counsel the government had agreed not to attempt to introduce the purported  
21 Mexican birth certificate of defendant. Said document is not included in the government's  
22 current offered exhibits and it is assumed that the government is abiding by its prior agreement.  
23 Similarly the government had no objections to the issues addressed by the defendant's previously  
24 filed Motion *in Limine* to Sequester Witnesses, and it is assumed that the government's position  
25 remains the same. The parties had also previously agreed that evidence that the defendant was  
26 most recently located and "found" at San Quentin Prison prior to the initiation of the present  
27

proceedings would not be presented to the jury in this case. Under the present circumstances and until the matter is further discussed with the defendant, that agreement may not hold, although counsel has advised the defendant that such a stipulation is in the defendant's best interest.

Certain other evidentiary agreements had previously been achieved, but with recent developments can not necessarily be expected to be maintained or enforceable, such as agreements by the government not to introduce evidence in its case in chief or to redact certain items of documentary evidence. These prior discussions and the underlying evidentiary issues are discussed below in the context of the relevant subject matter and will have to be worked out between the parties or resolved by the court.

## **2. INTRODUCTION OF EVIDENCE PURSUANT TO FEDERAL RULE OF EVIDENCE**

### **803(8)**

Among the exhibits offered by the government are a number of records expected to be introduced as public records pursuant to Federal Rule of Evidence 803(8) to overcome a hearsay objection. Included in these offered exhibits are various warrants of deportation relating to the defendant for 1994, 1995, 1998, 2001 and 2005. The defendant recognizes that warrants for deportation are generally admissible under Rule 803(8) and not subject to the law enforcement exception to that rule. *United States v Loyola-Dominguez* 125 F3d 1315 (9<sup>th</sup> Cir. 1997). [Evidence of defendant's warrant of deportation under public records exception did not violate defendant's confrontation rights since notation on such warrant indicating that alien has left country is routine, objective, indeed mechanical recording of unambiguous factual matter, and admission of evidence under firmly rooted exception to hearsay rule does not violate confrontation clause. *United States v Contreras* 63 F3d 852, (9<sup>th</sup> Cir.1995) (criticized in *United States v Romo-Romo* 246 F3d 1272,(9<sup>th</sup> Cir. 2001)] [Deportation documents are admissible to prove alienage under public records exception to hearsay rule. *United States v Hernandez-Herrera* 273 F3d 1213, (9<sup>th</sup> Cir. 2001), cert den. 537 US 868,(2002)] While conceding that warrants for deportation may be admissible because they are the type of routine, nonadversarial items with ministerial or objective

1 observations typically admitted under hearsay exception for public records, defendant submits  
 2 that not all portions of the deportation warrant documentation should be admitted and that  
 3 portions of the documentation should be redacted. Objections as to particular portions of the  
 4 deportation warrant documents are discussed below under the section pertaining to motions *in*  
 5 *limine* to redact certain portions of the offered exhibits. The gist of the objections as to portions  
 6 of these documents is that while the fact of deportation/removal is relevant, the reasons for the  
 7 deportation/removal are not. Furthermore, portions of the documents are either double hearsay or  
 8 unduly prejudicial.

### 9 **3. INTRODUCTION OF STATEMENTS BY THE DEFENDANT**

10 Included within the offered exhibits by the government are documents identified as sworn  
 11 statements of the defendant in 2001 and 2008 which the government has indicated it intends to  
 12 introduce as public records pursuant to Federal Rule of Evidence 803(8). (Govt. Exhibits 6 and  
 13 8) These documents purport to provide essentially a written confession by the defendant of all  
 14 elements of illegal reentry, including his true name, his parents' citizenship, his birthplace, his  
 15 immigration status, his failure to seek permission to enter the United States, and his prior  
 16 deportations. Discussions with prior counsel took place to concede the admissibility of these  
 17 exhibits but no such agreement was made with present counsel and defendant now contests the  
 18 admissibility of these exhibits and the reported statements by the defendant, and defendant  
 19 requests a hearing outside the presence of the jury as to the admissibility of these exhibits and  
 20 documents to establish that they were voluntary.

21  
 22 18 U.S.C. Section 3501 states that:

23 (a) In any criminal prosecution brought by the United States . . . a confession . . . shall be  
 24 admissible in evidence if voluntarily given. Before such confession is received in  
 evidence, the trial judge shall, out of the presence of the jury, determine any issue as to  
 voluntariness....

25 (b) The trial judge in determining the issue of voluntariness shall take into consideration  
 26 all the circumstances surrounding the giving of the confession, including (1) the time  
 27 elapsing between arrest and arraignment of the defendant making the confession, if it was  
 made after arrest and before arraignment, (2) whether such defendant knew the nature of  
 the offense with which he was charged or of which he was suspected at the time of

1 making the confession, (3) whether or not such defendant was advised or knew that he  
 2 was not required to make any statement and that any statement could be used against him,  
 3 (4) whether or not such defendant had been advised prior to assistance of counsel; and (5)  
 4 whether or not such defendant was without the assistance of counsel when questioned and  
 5 when giving such confession.

6 There can be little doubt that the 2001 and 2008 statements of the defendant amount to a  
 7 confession. 18 U.S.C. Section 3501(e) defines “confession” “means any confession of guilt of  
 8 any criminal offense or any self-incriminating statement made or given orally or in writing.”

9 Accordingly, defendant requests an evidentiary hearing as to the admissibility of these  
 10 incriminating statements.<sup>1</sup> Counsel well realizes the timeliness issues as to this request but

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11 <sup>1</sup> The protections of *Miranda* have been repeated so often in film and television as  
 12 to become ingrained into American pop culture: [T]he prosecution may not use statements,  
 13 whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant  
 14 unless it demonstrates the use of procedural safeguards effective to ensure the privilege against  
 15 self-incrimination. *Miranda v. Arizona*, 384 US 436, 444 (1966). Among these procedural  
 16 safeguards are the right to an attorney, the right to remain silent, and notice that any statements  
 17 given may be used against the declarant. *Id.* It cannot be disputed that Mr. Martearena-Arriola  
 18 was in custody when interrogated. The government apparently intends to rely upon the results of  
 19 this custodial interrogation. To do so it must prove, by a preponderance of evidence, that Mr.  
 20 Martearena-Arriola validly waived his rights. *See United States v. Heredia-Fernandez*, 756 F.2d  
 21 1412, 1415 (9th Cir. 1985) (Voluntariness must be established by a preponderance of the  
 22 evidence.) In addition to having constitutional dimensions, the admissibility of a confession is  
 23 also subject to statutory constraints: A valid waiver of a defendant's Fifth Amendment rights  
 24 against self-incrimination can only occur if “the waiver is made voluntarily, knowingly, and  
 25 intelligently.” *Miranda*, 384 U.S. at 575. The Court in *Miranda* stated that where a custodial  
 26 interrogation is conducted without the presence of an attorney and a statement is taken, [A] heavy  
 27 burden rests on the government to demonstrate that the defendant knowingly and intelligently  
 28 waived his privilege against self-incrimination and his right to retained or appointed counsel. . . .  
 This Court has always set high standards of proof for the waiver of Constitutional rights, *Johnson*  
*v. Zerbst*, 304 U.S. 458 (1938), and we re-assert these standards as applied to in-custody  
 interrogation. 384 U.S. at 475. This Court's analysis begins with a presumption *against* valid  
 waiver. It is the government's “great” burden to overcome this presumption: The courts must  
 presume that a defendant did not waive his rights; the prosecution's burden is great; but in at least  
 some of the cases waiver can be clearly inferred from the actions and words of the person  
 interrogated. *North Carolina v. Butler*, 441 U.S. 369, 373 (1979).

1 given recent discussions with the defendant and the exercise of effective preparation on behalf of  
2 the defendant, it would be a dereliction of responsibility not to now raise this issue.

3 As to admissibility under Rule 803(8), defendant submits that pursuant to *United States v*  
4 *Orellana-Blanco* 294 F3d 1143 (9<sup>th</sup> Cir. 2002), a written report of an interview between  
5 defendant and an officer of the Immigration and Naturalization Service is not admissible in a  
6 criminal proceeding against the defendant as public record under Federal Rule of Evidence  
7 803(8) because the report was not the type of routine, nonadversarial item with ministerial or  
8 objective observations that is typically admitted under hearsay exception for public records. The  
9 government's witness list includes the officers who reportedly interviewed the defendant in 2001  
10 and 2008 and those witnesses should be questioned outside the presence of the jury prior to the  
11 admission of the confessions by the defendant.

12 As to additional statements by the defendant, immigration hearing tapes have been  
13 provided by the government as to hearings conducted in 1994, 1995 and 2005. The tapes are not  
14 included on the government's current exhibit list but have been the subject of prior discussions  
15 and are mentioned in the government's current trial memorandum. Previous discussion were to  
16 the effect that such tapes would not be introduced by the government in their case in chief but  
17 could potentially be used as impeachment material should the defendant decide to testify.  
18 Defendant hereby lodges an objection to any admission of the tapes (and transcripts) in that the  
19 aforementioned materials do not qualify as public records and are irrelevant and prejudicial.

20 One additional statement of the defendant that is at issue concerns a 2001 Notice and  
21 Order of Expedited Removal. (Govt. Exhibit 4) The specific document is discussed below as to  
22 the potential redaction of four of the five bullet points contained within the document but the  
23 government has recently taken the position that redaction of four of the bullet points is  
24 acceptable, but that one of the bullet points should be included, reading "You verbally declared  
25 yourself to be a citizen of the United States". Defendant submits that the reference to the  
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1 statement should be redacted and should not be admitted without a substantive showing as to the  
2 voluntariness, context and foundation for any such purported statement. The government need  
3 not prove the lawfulness or validity of the immigration proceeding that resulted in the 2001  
4 removal order and any factual finding underlying the INS determination of inadmissibility- e.g.  
5 false representation as to U.S. citizenship. Further, any alleged false representation by the  
6 defendant to gain entry in to the United States does not prove any element of a §1326 violation.

#### 7 **4. INTRODUCTION OF FINGERPRINT EVIDENCE AND EXPERT TESTIMONY**

8 The government has provided notice of its intention to offer expert testimony as to  
9 fingerprint evidence and has proffered exhibits as to fingerprint cards for the defendant.  
10 Fingerprint evidence is also included on previously mentioned deportation warrants and the  
11 documentation concerning defendant's 1993 aggravated felony conviction. Given previous  
12 filings and the discovery provided, the defense is not objecting on notice grounds to the  
13 testimony of Mr. Woods, the fingerprint expert. Admissibility of the fingerprint cards as public  
14 records and the fingerprint evidence included with other exhibits will be left up to the court and  
15 will not be the subject of a stipulation, acknowledging that discussions of such stipulations  
16 certainly took place.

#### 17 **5. EXHIBITS OFFERED BY THE GOVERNMENT AND REDACTION OF INCLUDED** 18 **MATERIAL**

19 The parties have been discussing and reviewing the majority of the government's  
20 proffered exhibits for some time and had resolved some issues as to partial redaction of certain  
21 exhibits. Current developments and positions as to stipulations may have changed the  
22 government's position and that the parties can confer to try to work out those issues.

23 Previously mentioned was the 2001 Notice and Order of Expedited Removal. (Govt.  
24 Exhibit 4) that contains bullet points as to the reasons for the defendant's removal in 2001. An  
25 agreement had previously been achieved to redact four of the bullet points, but the government  
26 insisted on including a reference to the defendant's alleged statement that he declared himself to  
27



1 be a U.S. citizen. Defendant submits that all the bullet points should be redacted. Similar  
2 redactions were previously agreed upon as to their proffered 2001 Notice to Alien Ordered  
3 Removed/Departure Verification (Govt. Exhibit 5) and it remains to be seen if the government  
4 will abide by the agreement to redact portions of the document, which can be discussed at the  
5 pretrial conference hearing.

6 The government intends to introduce fingerprint cards connected to the defendant as  
7 public records. (Govt. Exhibits 9, 10, 11) Information is contained on the fingerprint cards  
8 having to do with place of birth and country of citizenship which the government has previously  
9 agreed to redact, and the defendant requests the government to continue to agree to the redactions  
10 or for the court to order the redactions.

11 Government Exhibits 13 and 14 relate to prior convictions of the defendant which the  
12 government intends to use for impeachment purposes if the defendant testifies. Objections to the  
13 impeachment pursuant Federal Rule of Evidence 609 are lodged below and issues as to any  
14 potential redaction of the documents can be addressed at a later time.

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17 **6. INTRODUCTION OF EVIDENCE OF EVIDENCE OF DEFENDANT'S 1993 PRIOR**  
18 **AGGRAVATED FELONY CONVICTION FOR BEING AN EX-FELON IN**  
**POSSESSION OF A FIREARM**

19 Government Exhibits 15, 16 and 17 all relate to defendant's alleged 1993 aggravated  
20 felony conviction for being an ex-felon in possession of a gun in Santa Clara County. Defendant  
21 submits that absent a stipulation there can be proof of the aggravated felony conviction pursuant  
22 to recent case law. However, only the fact of the conviction and not the underlying factual  
23 circumstances can be proved to the jury. Accordingly, there should be limitations and redactions  
24 as to the admissibility of the three proffered exhibits by the government that have to be worked  
25 out. The present exhibits contain information as to prior convictions of the defendant for drunk  
26 driving and his prior felony conviction for multiple drunk driving offenses (along with a  
27  
28



concurrent multiple drunk driving conviction along with the gun possession charge) and admission of that evidence should not be presented to the jury.

### **7. JURY INSTRUCTIONS**

The parties have met and conferred as to jury instructions and have resolved most disputes and agreed on a basic set of instructions, except for issues as to “voluntariness” and unanimity which can be addressed at the pretrial conference.

### **8. MR. MARTEARENA-ARRIOLA’S TWO PRIOR CONVICTIONS ARE INADMISSIBLE UNDER BOTH PRONGS OF FEDERAL RULE OF EVIDENCE 609.**

The government intends to introduce two prior felony convictions of the defendant pursuant to Federal Rule of Evidence 609 if the defendant testifies. The evidence provided as to the two convictions has been submitted to the court as Exhibits 13 and 14 in the government’s proffered exhibit binder, a 1995 felony perjury conviction and a 1997 conviction for providing false information to a police officer.

The admissibility of a testifying defendant’s prior convictions is governed by Federal Rule of Evidence 609. In relevant part, Rule 609(a) provides as follows:

For the purpose of attacking the character for truthfulness of a witness,

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

Fed. R. Evid. 609(a). Pursuant to Rule 609(b), evidence of a conviction under this rule is inadmissible if more than ten years have elapsed since the witness’s conviction or release from

1 imprisonment, unless the proponent gives advance written notice and the Court makes an express  
 2 finding that “the probative value of the conviction supported by specific facts and circumstances  
 3 substantially outweighs its prejudicial effect.” Fed. R. Evid. 609(b).

4 Rule 609 embodies greater protections against prejudice for criminal defendants than for  
 5 other witnesses. Specifically, when the government seeks to introduce a prior conviction against  
 6 the defendant, Rule 609 reverses the balancing of probative value and prejudicial effect that  
 7 courts customarily undertake under Rule 403. Whereas Rule 403 encourages admission of  
 8 evidence unless its probative value is substantially outweighed by the danger of prejudice, Rule  
 9 609 permits prior convictions to be admitted only when their probative value outweighs their  
 10 prejudicial effect. The Ninth Circuit has elevated this hurdle to still greater heights, stating that  
 11 the “government bears the burden of showing that the evidence’s probative value *substantially*  
 12 outweighs its prejudicial effect.” *United States v. Browne*, 829 F.2d 760, 763 (9th Cir. 1987)  
 13 (emphasis added); *see also United States v. Alexander*, 48 F.3d 1477, 1488 (9th Cir. 1995).

14 **A. The Probative Value of Mr. Martearena-Arriola’s Prior Convictions Does**  
 15 **Not Outweigh the Substantial Prejudicial Effect under 609(a)(1).**

16 The first prong of Federal Rule of Evidence 609 bars admission of evidence that  
 17 an accused has been convicted of a crime unless the court determines that the probative value of  
 18 admitting this evidence outweighs its prejudicial effect. Fed. R. Evid. 609(a)(1). In *United*  
 19 *States v. Alexander*, 48 F.3d 1477 (9th Cir. 1995), the Ninth Circuit reiterated the balancing test  
 20 to be used when a district court is confronted with Rule 609 evidence:

21 In *United States v. Cook*, . . . we outlined five factors that should  
 22 be considered in balancing the probative value of a prior conviction  
 23 against its prejudicial impact for purposes of Rule 609(a)(1): (1)  
 24 the impeachment value of the prior crime; (2) the point in time of  
 25 conviction and the defendant’s subsequent history; (3) the  
 26 similarity between the past crime and the charged crime; (4) the  
 27 importance of the defendant’s testimony; and (5) the centrality of  
 28 the defendant’s credibility. *The government bears the burden of*  
*showing, based on these factors, that the proffered evidence’s*  
*probative value substantially outweighs its prejudicial effect.*

1 *Alexander*, 48 F.3d at 1488 (internal citations omitted) (emphasis added); *see also United States*  
 2 *v. Martinez-Martinez*, 369 F.3d 1076, 1088 (9th Cir. 2004) (reiterating the factors in the *Cook*  
 3 balancing test).<sup>2</sup>

4 The government has not met its burden in this case. First, Mr. Martearena-  
 5 Arriola's prior convictions have little or no impeachment value because they do not relate to his  
 6 truthfulness. As such, unless Mr. Martearena-Arriola were to deny the very existence of his  
 7 criminal history, evidence of his prior convictions would have no acceptable impeachment value.  
 8 Under these circumstances, the Ninth Circuit has advised that courts should exclude the prior  
 9 conviction(s), "with a warning to the defendant that any misrepresentation of his background on  
 10 the stand will lead to admission of the conviction for impeachment purposes." *United States v.*  
 11 *Cook*, 608 F.2d 1175, 1187 (9th Cir. 1979).

12 Second, the similarity of a prior conviction to the offense for which the defendant  
 13 is on trial weighs heavily against admissibility under Rule 609. *See United States v. Bagley*, 772  
 14 F.2d 482, 488 (9th Cir. 1985). As the Fourth Circuit has explained,

15 [a]dmission of evidence of a similar offense often does little to  
 16 impeach the credibility of a testifying defendant while undoubtedly  
 17 prejudicing him. The jury, despite limiting instructions, can hardly  
 18 avoid drawing the inference that the past conviction suggests some  
 19 probability that defendant committed the similar offense for which  
 20 he is currently charged. The generally accepted view, therefore, is  
 21 that evidence of similar offenses for impeachment purposes under  
 22 Rule 609 should be admitted sparingly if at all.

23 *United States v. Sanders*, 964 F.2d 295, 297-98 (4th Cir. 1992) (internal quotes and citation  
 24 omitted); *accord Bagley*, 772 F.2d at 488. Here, Mr. Martearena-Arriola's prior conviction for  
 25 illegal entry is extremely similar to the charged crime, omitting only the prior-removal element.  
 26 Notwithstanding a limiting instruction, a jury would almost surely infer from the fact of Mr.

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27 <sup>2</sup>In 2006, Rule 609(a) was amended to read, "For the purpose of attacking the character for  
 28 truthfulness" of a witness, rather than the "credibility" of a witness. This change makes clear that  
 the rule's concern is with attacks on the witness's truthful character.

1 Martearena-Arriola's prior illegal-entry conviction that he more likely committed the charged  
 2 offense. *See* Fed. R. Evid. 609 Advisory Comm. Notes (1990 Amendments) (noting possibility  
 3 that prior convictions "will be misused by a jury as propensity evidence despite their introduction  
 4 solely for impeachment purposes"). As such, this factor counsels strongly against admission.

5 Finally, Mr. Martearena-Arriola's testimony is not especially important to the  
 6 government's case-in-chief. The government need only prove that Mr. Martearena-Arriola  
 7 reentered the country without permission. Given the very real potential for prejudice, the balance  
 8 under Rule 609 tips decisively against admission of Mr. Martearena-Arriola's prior convictions.

9 **B. Mr. Martearena-Arriola's Prior Convictions Are Inadmissible Under Rule**  
 10 **609(a)(2) Because They Do Not Involve Acts of Dishonesty or False**  
 11 **Statements.**

12 Mr. Martearena-Arriola's prior convictions are also inadmissible under the second  
 13 prong of Rule 609 because it cannot be "readily . . . determined that establishing the elements of  
 14 the crime[s] required proof or admission of an act of dishonesty or false statement" by Mr.  
 15 Martearena-Arriola. Fed. R. Evid. 609(a)(2). In *United States v. Ortega*, 561 F.2d 803 (9th Cir.  
 16 1977), the Ninth Circuit adopted a narrow reading of Rule 609(a)(2), limiting its application to  
 17 "those crimes that involve some element of misrepresentation or other indicium of a propensity  
 18 to lie." *Id.* at 806. The court expressly excluded "those crimes which, bad though they are, do  
 19 not carry with them a tinge of falsification." *Id.*; *see also United States v. Hayes*, 553 F.2d 824,  
 20 827 (2d Cir. 1977) (limiting Rule 609(a)(2) to convictions "that bear directly on the likelihood  
 21 that the defendant will testify truthfully (and not merely on whether he has a propensity to  
 22 commit crimes)").

23 Mr. Martearena-Arriola's prior convictions do not involve elements of deceit,  
 24 untruthfulness, or falsification bearing upon his propensity to testify truthfully. *See United States*  
 25 *v. Glenn*, 667 F.2d 1269, 1273 (9th Cir. 1982) ("Generally, crimes of violence, theft crimes, and  
 26 crimes of stealth do not involve 'dishonesty or false statement' within the meaning of rule  
 27 609(a)(2)."). Accordingly, none of the convictions is admissible under Rule 609(a)(2).

1                   **10. GOVERNMENT'S MOTIONS IN LIMINE PER TRIAL MEMO**

2                   The government has submitted various *in limine* motions in its recent trial memorandum  
3 and the defense submits all issues not otherwise addressed herein.

4                   **CONCLUSION**

5                   For the foregoing reasons, Mr. Martearena-Arriola respectfully moves the Court to  
6 address and rule on all trial issues addressed in this memorandum and raised at the hearing of this  
7 matter in accordance with the recommendations and suggestions contained herein.  
8

9  
10 Dated: August 26, 2008

Respectfully submitted,

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12                   \_\_\_\_\_  
                                  /s\

13                   ROBERT WAGGENER  
14                   Attorney for Defendant  
15                   CELSO MARTEARENA-ARRIOLA  
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